Sectt. H-27—45,000—15-11-35.

Home (193 6) Department

SERIES.

G.O. No. 2888

DATED 26.10.1936

[Despatch Abstract.]

Prosecution - Gidda Hanumantha - Approval in Bellary S.C. No.20/36 - Public Prosecutor, Madras, requested to move the High Court under section 339(3), Criminal Procedure Code.

C.F. 32.

In reply, please quote number, date and short title.*

~~Magisterial.~~ DEPARTMENT.

*Received*_____ *Registered*_____

From (Name) T.Bhaskara Rao Esq.,I.C.S.,

(Designation) District Magistrate,

Post Box_____, (Station)_____Bellary.

*Telegraphic Address*_____

To

The Secretary to Government,

Home Department,MADRAS.

Ref.C. *No.* ~~1052/36~~ *dated* ~~2/10/36~~. *19*

Sir,

ENCLOSURES_____

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SPARE COPIES_____

Ppf-11 wfsa

S.C

Criminal justice - ~~Section~~ 20/36 on the file of the Sessions Judge - Bellary - prosecution for purjury of the approver - Gidde Hanumantha - sanction - application under section 339 Cr.P.C.

I enclose herein a copy of the letter from the Public Prosecutor Bellary, the material records relating to P.R.2/36 on the file of the S.S.M.Hospet together with English translations of the confessional statement of the approver, his depositions in the I and II preliminary enquiries and in the Sessions court and a printed copy of the judgment in S.C.20/36 on the file of the Sessions Judge Bellary.

Pp8-5 wfsa (H)

Pp69-74 + Pp339-345 of (H)

Pp6-11 wfsa

2. The approver made a confessional statement before the S.S.M. Hospet and was later tendered pardon by me on condition that he would make a full and true disclosure of all the facts connected with the murder. In his deposition in the 1st Preliminary enquiry (a second was necessitated due to a change in magistracy) he deposed in accordance with his confessional statement under section 164 Cr.P.C. At the ~~end of~~ 2nd preliminary enquiry and in the sessions court, the approver deposed that he knew nothing in the matter and that he made his previous statements under compulsion and threats of police. He is therefore liable to be tried for the offence of murder under section 302 I.P.C and for having given false evidence under section 193 I.P.C in so far as he deposed on oath in the I enquiry that he knew of the murder

& Pp334 of (H)

f.p 363-365 of (H)
& Pp369-371

p.t.o

murder and that he himself murdered along with the two accused and later denied all knowledge of the offence in the 2nd enquiry and in the Sessions court as well. As regards the offence of murder, as the learned Public Prosecutor ~~poin~~ points out, the only evidence available is his own confessional statement under section 164 and his I deposition in the I preliminary enquiry. But he can be prosecuted with the previous sanction of the High Court for giving false evidence. I therefore request that the Government may be pleased to instructx the Public Prosecutor Madras, to move the High Court for sanction of the prosecution of the approver for perjury.

RVJ/3.10.

For. Collector. & Dt. Magistrate.

Copy of letter dated 4-8-1936 from the Public Prosecutor Bellary to the District Magistrate, Bellary.

I beg to bring to your notice the fact that the Sessions Judge acquitted both the accused in S.C.20/36 connected with P.R. 2/35 on the file of the Sub Magistrate, Hospet yesterday i.e., 3-8-36.

One Vadde Hanumanthu son of Thimmappa of Chatradahalli who was alleged to have abetted the dropping of a big stone on the chest of Budan Sahib of Narayanadevarakeri at midnight while he was lying in his threshing floor near Chadradahalli and killed him at the instance of the 1st accused in the case (Naenahalli Hussain Sahib the son-in-law of the deceased) and in complicity with the 2nd accused, Kalla Ranga made a confessional statement under section 164 Cr.P.C. before the Sub Magistrate Mr.Y.S.Anantharajiah and later on was tendered pardon by the Dt.Magistrate on condition that he would make a full and true disclosure of all the facts connected with the murder.

Hanumavva, the wife of the 2nd accused, also made a statement on oath under section 164 Cr.P.C. that the 1st accused went to her house at midnight on the night of the offence and asked the 2nd accused and the above Vadde Hanumantha to join him in murdering his father-in-law by throwing a stone, offering them a reward of Rs.100 for their services, that the 2nd accused, her husband and Vadde Hanumantha accepted the offer and that they three left her house with the object of murdering the deceased. She added that later on the 2nd accused and Vadde Hanumanthu returned to her house and told her that they had killed Budan Sahib and that they were prepared to suffer the consequences.

The 1st accused also made a confessional statement under section 164 Cr.P.C to the same effect.

Later on as the second accused was absconding the preliminary enquiry was started against only the 1st accused before the then Sub Magistrate, Mr. Anantharajiah, Vadde Hanumantha was examined for the prosecution as approver and he deposed in accordance with the confessional statement he had made under section 164 Cr.P.C. Hanumavva, the wife of the 2nd accused also was examined for the prosecution and she also deposed in accordance with her statement

under section 164 Cr.P.C. The evidence for the prosecution was almost closed and there were only two or three formal witnesses to be examined when Mr. Anantharajayya was transferred. Meanwhile the 2nd accused was arrested. Mr. Thirumala Rao who succeeded Mr. Anantharajayya as the Sub Magistrate then held a fresh preliminary enquiry. Vadde Hanumantha, the approver and Hanumavva the wife of 2nd accused, were examined as prosecution witnesses for the second time and they then deposed that they knew nothing in the matter and that they had made their previous statements on the compulsion and threats of the Police. The 1st accused retracted his previous confessional statement recorded under section 164 Cr.P.C.

The two accused were committed to the Sessions and the case was tried as S.C.No.20/36 on 29/7/36 and 30/7/36. I examined Vadde Hanumantha and Hanumavva as P.Ws 3 and 4 and they denied all knowledge adding that they had made their previous earlier statements through the fear of the Police. I then requested the judge to file their depositions in the first preliminary enquiry under section 288 Cr.P.C.only as against the 1st accused as they could not be filed against the 2nd accused as they denied all knowledge in the 2nd Preliminary enquiry as against them. I also filed the confessional statements of the 1st accused under section 164. I contended that the depositions of P.Ws.3 and 4 filed under section 288 and the retracted confession of the 1st accused were quite sufficient for the conviction of the 1st and quoted authorities in support of my contention. I also submitted that there was no evidence against the 2nd accused except the retracted confessional statement of the 1st accused and that that would not support a conviction. I also let in evidence of misunderstandings between the 1st accused and the deceased.

The learned Judge acquitted both the accused holding that the resiled statements of P.Ws.3 and 4 were not sufficient to corroborate the retracted confessional of the 1st accused. But I am of opinion that the depositions filed under section 288 Cr.P.C. form substantive evidence which could by itself support a conviction of the 1st accused.

Under section 337-Cl(3) the approver was discharged when

G.O. 1064 / 36

--------when the judgment was pronounced as he could not be detained in custody in view of further proceedings being taken against him.

P367 8(#) I filed my certificate under section 339 Cr.P.C in the Sessions Court to the effect that in my opinion, the approver who accepted the tender of pardon of the Dt.Magistrate has by wilfully concealing the essential facts connected with the offence of murder and by giving false evidence, not complied with the condition on which the tender was made.

Vadde Hanumantha the approver is now liable to be tried for the offence of murder under section 302 I.P.C and for having given false evidence under section 193 I.P.C in so far as he deposed on oath in the first enquiry that he knew of the murder and that he himself murdered along with the two accused and later on denied all knowledge of the offence in the second enquiry and in the Sessions court as well.

But he can be prosecuted for false evidence only after obtaining the sanction of the High Court As regards the offence of murder the only evidence that would be available against the approver is his own confessional statement under section 164 and his first deposition in the 1st preliminary enquiry.

I have brought all the facts of the case to your notice for taking such further action as you may deem to be proper.

(True Copy)

RVJ/3.10.

For Dt.Magistrate.

3/10

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Home Dept

2/9/X (C.2488 X) Memo No. 2496D-1X/ 8.10.36

by C.S.H. 8.X.

Perjury-
Prosecution - Gidda Hanumantha - Approver - Bellary
S.C. No. 20/36 - Sanction
Ref: From the D.M. Bellary
Ref. No. 1052/36 dated 2.10.36.

1 h B - II cf.

Referred to the Public Prosecutor, Madras for opinion as to whether an application to the High Court under Sec. 339 (3) Cr. P.C. is likely to be successful in the case referred to above.

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9.1.36.

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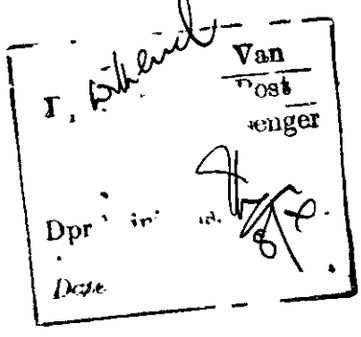
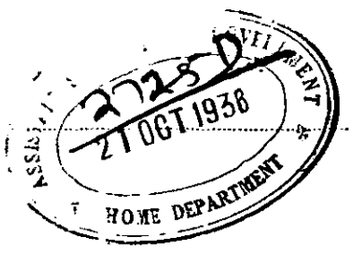
The P.P. Madras
(Write if wrong.
to see Mr's. write reply).

Lucas 9.10.36



C.F. 30.

JUDICIAL DEPARTMENT.



Received ..... 19 *Registered* 19

Subject.

Prosecution - perjury - Approver - S.C. 20/36 - Sessions Judge, Bellary - forwarding opinion.

ENCLOSURES.
No. .....
.....
Spare copies .....

Opinion No. 64 of 36

Station Madras, *Dated the* 19th October 1936.

From (Name) L. H. Bewes Esquire,

(Designation) Public Prosecutor, Madras.

To The Secretary to the Government of Madras,

HOME Department.

Sir,

With reference to Memorandum No. 2496 D-1, Home, dated 8th October 1936, I have the honour to forward herewith my opinion in the matter.

2. The enclosures received with the memorandum are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

L. H. Bewes

Public Prosecutor.

RS/19-10.

Memorandum No. 2496 D-1, Home, dated 8--10--1936

O P I N I O N

In S.C.No. 20 of 36 on the file of the Sessions Court of Bellary, the accused 1 and 2 were tried for the murder of one Budan Sahib and acquitted.

P.W.3 Gidda Hanumantha who was examined for the prosecution in that case was also an accused and confessed that he committed the crime along with the two accused in the case. He was given pardon and was taken as an approver.

In the Committing Court he deposed as PW.1 and stated that Accused 1 and Accused 2 and himself dropped a stone on the deceased as a result whereof he died.

He stated as follows:--"I slept in the house of Accused 2. Daily I used to mess in his house and sleep there. Accused 1 woke me up and told me to follow him and the other accused, to which I replied I was feeling unwell. Myself, Accused 2 and Accused 1 went to a manure heap in the village, removed a stone and carried it to the place where the deceased was sleeping. We three lifted it. Accused 2 carried it and dropped it on the chest of the deceased."

On account of the change in the Magistracy the case was again enquired into by another Magistrate

and before the succeeding Magistrate he withdrew his statement.

In the Sessions Court he was examined as PW 3 and there also he went back on the statement and thereafter his deposition in the Magistrate's Court in the first enquiry was marked and treated as evidence under Section 288 Criminal Procedure Code.

In the Sessions Court he stated: "I did not know how the deceased met with his death. I had nothing to do with the murder of Budan Sahib. Accused 1 did not seek my help. I did not carry the stone along with Accused 1 and 2 and threw it on the deceased."

In view of these contradictory statements I am of opinion that an application under Section 339 (3) Criminal Procedure Code for prosecuting Gidda Hanumantha for an offence under Section 193 I.P.C is likely to be successful.

Madras,
19th Oct. 1936.

Public Prosecutor.

RS/19-10.

30/10/36

DRAFT FOR APPROVAL.

C.F. 16.

Date. Initials.

SUBJECT:— House Department

When received for fair copying ..		
When copied ..	31/10	
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When signed ..		
When despatched.		

Prosecution - Gidda Hanumantha - Approver in Bellary S.C. No. 20/36 - Public Prosecutor, Madras requested to move the High Court under Sec 339(3) Cr. P. Code -

READ AGAIN ..... , dated ..... 19....

" " ..... " ..... 19....

READ *ALSO*:— p16.

No. 24963 From the D. M. Bellary Roc. No. 1052/36 dated 2.10. 1936.

p13 " 2725 D " Public Prosr. Madras Opinion No. 64/36 " 19.10.36

Order / ~~Resolution~~ Ms. ~~Reut.~~ No. 2888, dated 28.10. 1936.

Vide precedent Ord 765 dt 29.2.36 (A) p14

The Public Prosecutor, Madras is requested to move the High Court under Sec. 339 (3) of the Code of Criminal Procedure, 1898, for sanction to prosecute Gidda Hanumantha, approver in S.C. No. 20 of 1936 on the file of the Sessions Judge, Bellary, for the offence of giving false evidence

Dpd ... 193

p16-11/6.

To

The D.P. Madras (with p1-11/6 in org (keeping copy of p1-5/6) and records at (4).

Copy to the D. M. Bellary (with copy of p13-15/6.).

28/10/36

p14